



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 176178

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for dextroamphetamine, a hearing was held on September 7, 2016, by telephone. The record was held open for 14 days for submission of additional evidence; no additional evidence was received.

The issue for determination is whether the criteria for approval of a non-preferred drug were met.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Written submission of [REDACTED], R.Ph.
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner is 27 years old and is diagnosed with attention deficit hyperactivity disorder (ADHD). On June 14, 2016 Copps Pharmacy requested prior authorization for dextroamphetamine, PA no. [REDACTED]. The service dates were February 18 and 24, 2016; the request was backdated because petitioner became eligible for MA retroactive to October, 2015, and these service dates

were within the retroactive eligibility period. By a letter dated June 30 the DHCAA denied the request.

3. Dextroamphetamine is a “non-preferred” stimulant drug within the MA program. The PA request detailed a previous failed test with Vyvanse, a preferred drug within the same class of drugs, but no other failures with preferred drugs.

DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, Ch. DHS 107. The specific medical necessity requirements at issue are as follows:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 - ...
 3. Is appropriate with regard to generally accepted standards of medical practice;
 - ...
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature.

Wis. Admin. Code, §DHS 101.03(96m). It is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

Dextroamphetamine is a non-preferred drug in a class called Stimulants and Related Agents. August 20, 2016 DHCAA case summary, page 3. In December, 2015, the Department issued Forward Health Update no. 2015-61 to MA providers. The Update described changes to the Preferred Drug list and other pharmacy policy changes. Its effective date was January 1, 2016.

The Update mandated that before approval of a non-preferred stimulant drug the member has to have experienced an unsatisfactory therapeutic response or a clinically significant adverse drug reaction with at least two preferred drugs from the stimulant drug class. The request in this case noted a prior unsatisfactory response to Vyvanse, a preferred drug, but noted no other adverse response or reaction to a preferred drug.

Because the provider failed to note two prior trials of preferred drugs, the DHCAA denied the request. Petitioner testified that she had other trials in different cities, and the record was held open for petitioner to obtain records of one or more of those trials. However, nothing was received, and I thus must affirm the agency's denial.

CONCLUSIONS OF LAW

The DHCAA correctly denied approval of a non-preferred stimulant drug because the request did not detail two unsatisfactory trials of preferred drugs.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of September, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 27, 2016.

Division of Health Care Access and Accountability